IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

MFA.No. 434 of 1996()

OP.MV.1359/1992 of MACT ALAPPUZHA
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APPELLANT - PETITIONER:

KERALA STATE ROAD TRANSPORT CORPORATION, REPRESENTED BY THE ASSISTANT TRANSPORT OFFICER, CHERTAHALA.

BY ADV. SHRI.JOHNSON P.JOHN, SC, KSRTC

RESPONDENTS - RESPONDENTS:
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1. **T.K. PALANI SWAMY, S/O. THIRU. KANDASWAMY MUTHALIYAR, SUVATHANLITHOOR THOTTAM, WARD NO.4, PULLUVANPETTY, COIMBATORE - 9.**

2. **SATHYAPALAN, S/O. RAJAPPAN, NADAKKAVU VEEDU, KODUVAYOOR, WARD NO.7, ETHANORE P.O., THITOOR, PALAKKAD.**

3. **THE BRANCH MANAGER, NEW INDIA INSURANCE CO. LTD., COIMBATORE.**

BY ADV. SRI.A.C.DEVY

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 30/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 434 OF 1996

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Dated this the 30th day of March, 2007

J U D G M E N T

The Kerala Road Transport Corporation, petitioner in O.P (MV) No.1359 of 1992 on the file of the Motor Accidents Claims Tribunal, Alappuzha, is the appellant. Two persons sustained injuries and a stage carriage bus owned by the appellant bearing Reg.No.KLX-4231 (S 666) sustained damages in an accident. The persons who sustained injuries filed two petitions. The appellant also filed a petition claiming the amount spent by it for repairing the vehicle. The Tribunal found that the accident occurred due to the rash or negligent driving of the driver of the Lorry which hit against the body of the appellant's bus. That finding has become final and conclusive. Though the Tribunal awarded compensation to the injured, the claim of the appellant was disallowed on the ground that the claim was not established. Exhibits A4 and A5 shows that the bus owned by the appellant sustained damages. P.W.4, who is the Assistant Transport

Officer, Cherthala, gave oral evidence to the effect that an amount of Rs.13,229/- was spent for repairing the bus. Oral evidence was supported by the job card prepared by the Workshop Manager. That document was not marked as the Workshop Manager was not examined. On the ground that the job card was not proved, the Tribunal rejected the claim. The Tribunal forgot the fact that oral evidence is also evidence. The Assistant Transport Officer, Cherthala, examined as P.W.4 gave oral evidence to the effect that an amount of Rs.13,229/- was spent for repairing the bus. The Tribunal ought to have passed an award allowing that claim especially in view of the fact that the lorry involved in the accident was covered by a valid policy of insurance.

2. It is seen that this appeal was filed in the year 1996. There was delay in making the service complete. In fact no process was filed till 2006. Notice issued to R1 and R2 returned unclaimed. Subsequently, this Court suo motu passed an order not to issue any fresh notice and declared the service of notice as complete. In view of the failure on the part of the appellant to

take steps at proper time, the Insurance Company cannot be saddled with the liability to pay interest from the date of petition till realisation. The insurance Company shall pay interest only from the date of filing of the petition till the date of award and thereafter from today till date of realisation.

In the result, the appeal is allowed. An award is passed in favour of the appellant to realise a sum of Rs.13,229/- from the third respondent. The amount shall be paid with 7% interest from the date of filing of the Original Petition till the date of award and thereafter from today till date of realisation. The insurer shall pay thew compensation.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 434 OF 1996

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J U D G M E N T

30TH MARCH, 2007